

2006

State of Utah v. Brandon Dominic Yazzie : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

STATE OF UTAH, :
Plaintiff/Appellee :
v. :
BRANDON DOMINIC YAZZIE, : Case No. 20060525-CA
Defendant/Appellant. :

BRIEF OF APPELLANT

Direct Appeal from Order revoking probation and increasing sentence to include consecutive sentences, issued as an amended “Post Sentencing Judgment/Commitment” on May 1, 2006, the Honorable Sheila McCleve, Judge, Third District Court, Salt Lake County, State of Utah, presiding.

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IN THE UTAH SUPREME COURT

STATE OF UTAH, :
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BRANDON DOMINIC YAZZIE, : Case No. 20060525
Defendant/Appellant. :

JURISDICTIONAL STATEMENT

Appellant/Defendant Brandon Dominic Yazzie (“Yazzie” or “Appellant”) timely appeals from a “Post Sentencing Judgment/Commitment” issued as part of probation revocation proceedings involving convictions for criminal mischief and burglary, both third degree felonies. The court of appeals certified this case to this Court pursuant to Rule 43, Utah Rules of Appellate Procedure; this Court therefore has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3) (2002). A copy of the certification order is in Addendum A. A copy of the “Post Sentencing Judgment/Commitment” being appealed is in Addendum B. A copy of the original judgment is in Addendum C.

STATEMENT OF THE ISSUE, STANDARD OF REVIEW, PRESERVATION

Issue: Whether, after sentencing a criminal defendant and entering judgment, the trial court has the authority to resentence following probation revocation to include a requirement that the sentence be served consecutively with other sentences, without offending statutory or double jeopardy protections?

Standard of Review. While sentencing decisions are generally reviewed for an abuse of discretion (State v. Perez, 2002 UT App 211, ¶25, 52 P.3d 451), the question of whether a trial court has the power to resentence a defendant to a higher sentence under Utah’s statutory scheme and without offending the protection against double jeopardy involves a question of law. See State v. Schofield, 2002 UT 132, ¶6, 63 P.3d 667; State v. Norcutt, 2006 UT App 269, ¶7, 139 P.3d 1066 (citing Chen v. Stewart, 2004 UT 82, ¶100 P.3d 1177).

Preservation. Defense counsel objected to the trial court resentencing Yazzie following probation revocation to increase the sentence by requiring that Yazzie serve the sentences in this case consecutively with the sentences imposed by another judge in another case. R. 82:4. The trial court disagreed with defense counsel and ordered that the sentence in this case run consecutively with the sentence in another case even though it had not imposed this consecutive sentencing order when judgment was entered. R. 82:4-5. Additionally, even if defense counsel had not objected, this Court could review this issue pursuant to Rule 22(e), Utah Rules of Criminal Procedure since the trial court imposed an illegal sentence in an illegal manner, in violation of Utah’s statutory scheme and the protection against double jeopardy when it resentenced Yazzie to a harsher sentence after finding that he had violated his probation. See discussion *infra* at 27-28.

TEXT OF RELEVANT STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

The texts of the following statutes, rules, and constitutional provisions are in Addendum D:

Utah Code Ann. § 77-1-6 (2003);

Utah Code Ann. § 77-18-1 (2003);

Utah Code Ann. § 76-3-401 (2003);

Utah Code Ann. § 76-3-201 (2003);

Utah Code Ann. § 77-27-1 (2003)

Utah R. Crim. P. 22;

Utah Const. art. I, § 12;

U.S. Const. amend. V.

STATEMENT OF THE CASE

In an Information filed January 20, 2005, the state of Utah charged Yazzie with one count of criminal mischief, a second degree felony, in violation of Utah Code Ann. § 76-6-106 (2003), one count of burglary, a third degree felony, in violation of Utah Code Ann. § 76-6-202 (2003), and one count of theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404 (2003). R. 3-5. On March 7, 2005, Yazzie pled guilty to criminal mischief and burglary, both third degree felonies. R. 41. The trial court imposed sentence and entered judgment of conviction on April 25, 2005. R. 45-46.

Pursuant to the sentence and judgment imposed and entered by Judge McCleve on April 25, 2005, Yazzie was required to consecutively serve two sentences of zero to five years at the Utah State Prison. R. 45-47. The judge suspended that sentence and placed Yazzie on probation. R. 46. The terms of probation included, among other things, requirements that Yazzie serve 365 days in the Salt Lake County jail and also that he

“[p]articipate in and complete any educational; and/or vocational training as directed by the Department of Adult Probation and Parole.” R. 46.

At the time Judge McCleve imposed sentence and entered judgment, Yazzie had already been sentenced by Judge Fuchs in case number 021910707. See Presentence report (R. 48:2, 6). Although the presentence report recommended that Judge McCleve order that her sentences run consecutively with Judge Fuchs’ sentence (R. 48:2), Judge McCleve did not follow that recommendation at sentencing. See Addendum C.

Adult Probation and Parole (“AP&P”) filed a Progress/Violation Report in this case, and the trial court issued an order to show cause. R. 49, 53. On April 27, 2006, AP&P filed a subsequent progress/violation report, indicating, among other things, that Judge Fuchs had executed the previously imposed prison sentence, sending Yazzie to prison in case number 021910707, on April 24, 2007. R. 62.

Judge McCleve held an order to show cause hearing on May 1, 2006. R. 67. At the order to show cause hearing, the trial court found that Yazzie violated the terms of probation and revoked his probation. R. 67. Thereafter, the judge resentenced Yazzie to require that his sentences in this case run consecutively with any other sentences he was serving. R. 67-68. The trial judge subsequently entered an amended “Post Sentencing Judgment/Commitment” on May 1, 2006. R. 69.

Yazzie filed a timely notice of appeal. R. 71. The court of appeals transferred this case to this Court after this Court granted certiorari review in State v. Anderson, Case No. 20070325-SC, which addresses a similar issue. This case is now before this Court on direct appeal.

STATEMENT OF THE FACTS

On March 7, 2005, Yazzie pled guilty in this case to the amended third degree felony charges of criminal mischief and burglary. R. 41. The trial court sentenced Yazzie on April 25, 2005 to two indeterminate terms not to exceed five years in the Utah State Prison, to be served consecutively to one another. R. 43-47. Judge McCleve suspended the prison terms and placed Yazzie on probation under the supervision of AP&P for 36 months; she signed and entered the final judgment on April 26, 2005. R. 45-47. See Addendum C containing judgment.

Although the presentence report indicated that Yazzie had been previously sentenced in Judge Fuchs' case and recommended consecutive sentencing, Judge McCleve did not order that the sentence in this case run consecutively with Judge Fuch's sentence. R. 48:2 ("It is recommended that probation run concurrent to case number 021910707, but the sentence run consecutive."); R. 45-47 (entering judgment for "0-5 on each count, consecutive to each other . . ." ; no mention of Judge Fuchs' case in judgment).

On April 24, 2006, Yazzie appeared before Judge Fuchs for an order to show cause hearing in case number 021910707. R. 62. Judge Fuchs found that Yazzie had violated his probation and ordered that the previously imposed prison sentence be executed. R. 62, 82:2.

On May 1, 2006, Judge McCleve held an order to show cause hearing in this case. R. 82. Yazzie admitted that he had violated his probation. R. 82:2. Judge McCleve revoked Yazzie's probation, and ordered that the sentences in her case were to be served

consecutively with the sentences imposed by Judge Fuchs. R. 82:2, 4. Defense counsel objected, pointing out that Judge McCleve had originally sentenced Yazzie to two terms, consecutive with one another, but not consecutive to any other sentences, and therefore the court could now only execute the original prison term it had previously imposed. R. 82:4. Despite defense counsel's objection, Judge McCleve reimposed sentence, increasing Yazzie's sentence to require that he serve the sentences in this case consecutively with the sentence in Judge Fuchs' case. R. 82:4-5. This appeal follows.

SUMMARY OF THE ARGUMENT

Final judgment is entered in a criminal case when the trial court imposes sentence and signs and enters judgment. Sentencing occurs shortly after plea or verdict, usually between two and forty-five days after guilt is adjudicated. While a trial court thereafter retains jurisdiction over probation, it does not have the jurisdiction or authority to later impose a harsher sentence. The concurrent/consecutive sentencing decision is part of sentencing and must be made when sentence is imposed shortly after a defendant is adjudged guilty. Utah's statutory scheme and the protection against double jeopardy demonstrate that a trial court can impose a consecutive sentence order when sentence is imposed and judgment entered, but cannot later impose such a consecutive sentence following probation revocation. Instead, while a trial court imposes sentence shortly after plea or verdict, it is limited to executing any previously imposed sentence following probation revocation. Hence, while Judge McCleve retained limited jurisdiction to oversee Yazzie's probation, she did not have the power or authority following probation

revocation to resentence Yazzie to require that he serve the sentence in this case consecutively with the sentence in Judge Fuchs' case.

This issue was preserved for review by defense counsel's objection. Even if it were not preserved, however, this Court can review the issue pursuant to Rule 22 (e), Utah Rules of Criminal Procedure. Because Utah's statutory scheme and double jeopardy concerns did not give Judge McCleve the authority to impose consecutive sentences following probation revocation, the consecutive sentencing order was an illegal sentence which was also imposed in an illegal manner.

ARGUMENT

POINT. FOLLOWING PROBATION REVOCATION, A TRIAL COURT CANNOT RESENTENCE A DEFENDANT TO REQUIRE THAT SENTENCES BE SERVED CONSECUTIVELY.

Under Utah's statutory scheme, a trial court enters final judgment in a criminal case when the judge imposes sentence and enters judgment. Although a trial court retains jurisdiction to oversee probation, the trial court cannot impose a harsher sentence following probation revocation and instead is limited to executing the previously imposed sentence. Since requiring a sentence to run consecutively with sentences imposed in other cases constitutes a harsher sentence, a trial court cannot impose such consecutive sentences for the first time following probation revocation. Additionally, imposition of a harsher sentence following probation revocation by requiring that the sentence be served consecutively with the sentence in another case creates multiple punishments for the same offense in violation of the Double Jeopardy protection.

A. Following Probation Revocation, the Trial Court Possessed Only the Authority to Execute the Original Sentence, and Could Not Amend the Sentence Once It Was Entered.

While a trial court has “continuing jurisdiction over all probationers,” until the probation term is completed, it is without jurisdiction or authority to amend the judgment and impose a harsher sentence following probation revocation in circumstances where the original judgment has been entered. See Utah Code Ann. § 77-18-1 (2)(b)(iii) (2003). In this case, the trial court erred when it revoked Yazzie’s probation and ordered the prison sentence imposed in this case to be served consecutively to a sentence imposed by a different judge in another case.

1. The original sentence was final and entered and could not be altered after probation revocation.

“[I]n a Utah criminal case, a final judgment occurs when the trial court enters the written judgment of conviction, including the sentence, into the record.” State v. Todd, 2004 UT App 266, ¶10 n.1, reversed on other grounds, 128 P.3d 1199; see also State v Bowers, 2002 UT 100, ¶4, 57 P.3d 1065 (further citation omitted) (“In a criminal case, it is ‘*the sentence itself*’ which constitutes a final judgment from which appellant has the right to appeal.”) After entering a valid final judgment of conviction, the trial court loses jurisdiction to amend the sentence. See State v. Montoya, 825 P.2d 676, 679 (Utah Ct. App. 1991) (further citations omitted) (“Once a court imposes a valid sentence, it loses subject matter jurisdiction over the case.”).

This rule that final judgment is entered in a criminal case when the trial court imposes sentence and then enters the signed, written judgment into the record has been

applied consistently in Utah case law. In fact, Utah courts have allowed judges to increase criminal sentences following oral imposition of sentence only in those circumstances where the trial judge has not entered a final judgment of conviction, and has made it clear that an orally imposed sentence was not final. See State v. Wright, 904 P.2d 1101, 1102-03 (Utah Ct. App. 1995); State v. Curry, 814 P.2d 1150 (Utah Ct. App. 1991).

In Wright, the court of appeals upheld the trial court's imposition of a harsher sentence only because the trial court had not entered a final judgment of conviction. Wright, 904 P.2d 1101, 1102-03 (Utah Ct. App. 1995); State v. Curry, 814 P.2d 1150 (Utah Ct. App. 1991). The trial court in Wright orally imposed probation but made it clear that the orally imposed sentence was not final, and did not sign and enter the judgment. Wright, 904 P.2d at 1102. After reviewing the subsequently completed presentence report, the trial court imposed a harsher sentence, sentencing Wright to prison. Id. The court of appeals held that the trial court's increase in sentence after oral imposition of a lighter sentence did not violate double jeopardy or due process protections since the trial court had not entered a final judgment. Id. at 1103.

The court of appeals applied similar reasoning under similar circumstances in Curry, 814 P.2d at 1150. The trial court in that case orally sentenced the defendant but did not reduce the sentence to writing. Id. Additionally, the trial court notified the defendant that it would not sign the "judgment, sentencing (commitment)" that had been orally imposed. Id. Because final judgment was not entered, the statutory double jeopardy protection did not preclude the trial court's subsequent imposition of a harsher

sentence. Id. at 1151. By contrast, when final judgment has been entered, as was the case here, the sentence is final. Compare id.

Although a final judgment occurs when a trial court imposes sentence and enters judgment, a trial court retains limited jurisdiction to oversee probation. Utah Code Ann. §77-18-1(2)(b)(iii), clarifies that “[t]he trial court has continuing jurisdiction over all probationers” (id.) even though the court has entered judgment.¹

The remainder of section 77-18-1 demonstrates that while a trial court has continuing jurisdiction to oversee probation, the court does not have jurisdiction to resentence a defendant following probation revocation. Utah Code Ann. § 77-18-1(2)(a) allows a trial court to impose sentence, then place a defendant on probation. It states in part, “[o]n a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may, *after imposing sentence*, suspend the execution of the sentence and place the defendant on probation.” Id. (emphasis added). This language establishes that sentence is *imposed* at the time of sentencing, prior to placing a defendant on probation, but that the *execution* of the sentence can thereafter be suspended.

¹ “‘When interpreting a statute, this [C]ourt looks first to the statute’s plain language to determine the Legislature’s intent and purpose . . . [reading] the plain language of the statute as a whole[.]’” State Farm Fire & Casualty Co. v. Sundance Dev. Corp., 2003 UT App 367, ¶4, 78 P.3d 995 (citations omitted). The court’s purpose when interpreting statutory language is “‘to render all parts [of the statute] relevant and meaningful,’ and . . . ‘presume the legislature use[d] each term advisedly and . . . according to its ordinary meaning.’” State v. Maestas, 2002 UT 123, ¶52, 63 P.3d 621 (alterations in original) (citations omitted). In doing so, the court seeks to “‘avoid interpretations that will render portions of the statute superfluous or inoperative.’” Id.

Later in the statute, the words *imposed* and *executed* are again used in the same manner. Utah Code Ann. § 77-18-1(12)(e)(iii). Rather than allowing a trial court to impose a new sentence following probation revocation, the statute makes it clear that when a defendant has been previously sentenced, upon revocation of probation “a sentence previously *imposed* shall be *executed*.” *Id.* Although that subsection also contains “shall be sentenced” language, that language does not apply when a defendant has been previously sentenced; the subsection does not allow resentencing and instead allows only the execution of a previously imposed sentence when probation is revoked.²

Other sections of Utah Code Ann. § 77-18-1 also show that sentence is imposed at the sentencing hearing prior to probation, and a defendant cannot subsequently be resentenced following probation revocation. For example, the statute contemplates that information about the defendant pertinent to sentencing (including the consecutive/concurrent sentencing decision) will be given to the judge at the time sentencing is imposed, not later at a probation revocation hearing. *See* Utah Code Ann. § 77-18-1 (5), (6) & (7). “Prior to imposition of any sentence,” the trial court can “continue the date for *imposition* of sentence” in order to obtain a presentence report or

² The court of appeals suggested in *Salt Lake City v. Jaramillo*, 2007 UT App 32, ¶12 n.1, 156 P.3d 839 that “the ‘shall be sentenced’ language [in subsection 12(e)] appears to have been inadvertently retained by the legislature when it amended section 77-18-1(2)(a) to remove the suggestion that a trial court could place a defendant on probation without a sentence and suspend the sentencing decision until probation was revoked.” *Id.* Regardless of whether this is correct, the statute nevertheless requires that in circumstances, such as those here, where sentence has been previously imposed, a trial court is limited to executing the previously imposed sentence.

other information about the defendant. Utah Code Ann. § 77-18-1(5)(a). The presentence report must be presented to defense counsel “three working days prior to sentencing” and a defendant must bring any inaccuracies to the attention of the sentencing judge; the defendant waives a challenge to the inaccuracies if he does not alert the judge prior to sentencing. Utah Code Ann. § 77-18-1(6)(a) & (b). And “[a]t the time of sentence, the court shall receive any testimony, evidence, or information the defense attorney or the prosecuting attorney desires to present concerning the appropriate sentence.” Utah Code Ann. §77-18-1(7).

The various subsections of section 77-18-1 therefore work together to establish that sentencing occurs prior to judgment and prior to probation, when the judge receives information pertinent to a reasoned sentencing decision; nothing in the statute suggests that a trial court can later re-impose a harsher sentence. Because a decision to impose consecutive or concurrent sentencing is part of sentencing, that sentence must be imposed at the time of sentencing and entered in the judgment and commitment. See Utah Code Ann. § 76-3-401(2003).

Other statutory and rule provisions also make it clear that sentence is imposed shortly after verdict or plea and not following probation revocation. For example, Rule 22(a), Utah Rules of Criminal Procedure and due process concerns at sentencing further demonstrate that sentencing decisions, including the consecutive/concurrent sentencing decision, must be made at the time of sentencing, and not following probation revocation. Rule 22(a) requires that a defendant be sentenced between two and 45 days after a plea or verdict; that subsection also allows a trial court to commit a defendant and continue or

alter bail “[p]ending sentence”. Utah R. Crim. P. 22(a). Additionally, Rule 22(a) requires the trial court to “afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment” “[b]efore *imposing* sentence.” Id. (emphasis added). That rule further mandates that the prosecution also be given the “opportunity to present any information material to the *imposition* of sentence.” Id. (emphasis added). These requirements of Rule 22(a) further the due process requirement that a sentencing court base sentencing decisions on relevant and reliable information. See State v. Wanosik, 2003 UT 46, ¶19, 79 P.3d 937 (citing State v. Howell, 707 P.2d 115, 118 (Utah 1985)). Like Utah Code Ann. § 77-18-1, Rule 22(a) and due process concerns demonstrate that sentencing occurs shortly after plea or verdict when the trial court is provided with information relevant to the imposition of sentence, and that the imposition of sentence takes place prior to placing a defendant on probation.

Judge McCleve signed and entered final judgment in this case on April 26, 2005. R. 45-47. The record shows that the judge intended to impose sentence and enter judgment at that time, and unlike Curry and Wright, the judge did not indicate that she intended to defer sentencing. The judge had access to a presentence report and other information relevant to the sentencing decision, as outlined in section 77-18-1. Additionally, the judge reduced the oral sentence to writing and signed and entered a final judgment of conviction. R. 45-47. The sentence was therefore final on April 26, 2005, prior to Yazzie’s attempts to fulfill the requirements of probation.

Although Utah Code Ann. § 77-18-1 gave Judge McCleve jurisdiction to oversee probation after entering final judgment, that statute did not give her jurisdiction to

resentence Yazzie more harshly after entering judgment. Therefore, once the trial court entered a written order of judgment into the record, and acted on it, the order was final and the trial court lost authority to do anything other than execute the original sentence entered upon revocation of Yazzie's probation. See Ex parte Lange, 85 U.S. 163, 176-78 (1873); Utah Code Ann. § 77-18-1(12)(e)(iii). Judge McCleve therefore did not have jurisdiction under Utah's statutory scheme to later resentence Yazzie and subsequently enter a modified, and harsher, judgment requiring Yazzie to serve the sentences in this case consecutively with those in Judge Fuchs' case.

2. The determination of whether multiple sentences run concurrently or consecutively must be made at the time of original sentencing.

Utah Code Ann. § 76-3-401, along with section 77-18-1, require that a consecutive sentencing order be issued at the time that sentence is imposed and final judgment entered. See Salt Lake City v. Jaramillo, 2007 UT App 32, ¶¶13-17, 156 P.3d 839. In fact, section 76-3-401 is "particularly instructive" in determining whether consecutive sentences could be imposed following probation revocation. Id. at ¶14. The language of section 76-3-401 "indicates that, in both felony and misdemeanor cases, the concurrent or consecutive determination is one that must be made and imposed at the time of sentencing." (end footnote omitted). Id.

The requirement that the decision be made at sentencing "gives the trial court, the State, and defendants a fixed point in time at which to evaluate the statutory factors." Id. at ¶15. This ensures that consecutive sentencing decisions are based on factors relevant to the crimes themselves, and not on the probation violations. Id. ; see also Rule 22(a),

Utah Rules of Criminal Procedure. For example, as the Jaramillo court noted, requiring the consecutive/concurrent sentencing decision to be made at the same time as the original sentencing avoids the improper situation where a court might make a decision to have sentences run consecutively “based on [the defendant’s] probation violations, which occurred after the original sentencing.” Id.

Utah Code Ann. § 76-3-401 states in part:

(1) A court shall determine, *if a defendant has been adjudged guilty of more than one felony offense*, whether to *impose* concurrent or consecutive sentences for the offenses. The court shall state on the record and *shall indicate in the order of judgment and commitment*:

(a) if the sentences imposed are to run concurrently or consecutively to each other; and

(b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.

Utah Code Ann. §76-3-401(1) (emphasis added). The emphasized language demonstrates that section 76-3-401 requires that the consecutive sentencing determination is part of the sentencing decision, is made shortly after a defendant is adjudged guilty, and is included in the judgment.

Section 76-3-401(1) requires a judge to decide whether to impose consecutive or concurrent sentences “if a defendant has been adjudged guilty of more than one felony offense[.]” Id. The plain language of the statute further requires that this decision be stated on the record and included in the judgment and commitment. Id. The two

sentences in subsection (1), when read together, contemplate that the consecutive or concurrent sentencing decision will be made at the time of sentencing. Id.

The court of appeals recognized in Jaramillo that Utah’s statutory scheme requires that the consecutive or concurrent sentencing decision be made at sentencing and not following probation violation. Jaramillo, 2007 UT App 32, ¶16. Because “the power to grant, modify or revoke probation is purely statutory,” the Jaramillo court first looked to Utah Code Ann. § 77-18-1 in determining whether the consecutive sentencing decision could be made following probation revocation. Id. at ¶12. That court recognized, as previously outlined, that section 77-18-1 “distinguishes between ‘imposing sentence,’ which is a necessary prerequisite to probation, and ‘the execution of the sentence.’” Id. at ¶13 (citing Utah Code Ann. §77-18-1 (2)(a)). Accordingly, the court focused on whether imposition of concurrent or consecutive sentencing was a function of the imposition of sentence, or a function of the execution sentence. Id. Since “Utah’s sentencing statutes clearly indicate that the concurrent or consecutive determination must be imposed as a component of the sentence itself[,]” the Jaramillo court concluded that Utah’s statutory scheme required that the decision be made at sentencing. See Jaramillo, 2007 UT App 32, ¶13 (citing Utah Code Ann. §§76-3-201(d) (Supp. 2006) and 76-3-401 (2003)).

Section 76-3-401 is “particularly instructive” because “the terminology employed throughout the section indicates that, in both felony and misdemeanor cases, the concurrent or consecutive determination is one that must be made and imposed at the time of sentencing.” Id. at ¶14 (end footnote omitted). That section “states that ‘[a] court

shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to *impose* concurrent or consecutive sentences for the offenses.’” Id. (quoting section 76-3-401(1)). The use of the word “impose” coupled with the remaining context is significant since it demonstrates that the consecutive or concurrent sentencing decision necessary under section 76-3-401 is a component of the imposition of sentence. Id.

Another aspect of the statute that is significant in determining the timing for the imposition of the consecutive/concurrent sentencing order is that the statute allows the Board of Pardons to request clarification from the trial court if the order does not state whether multiple sentences are to be served consecutively or concurrently. Jaramillo, 2007 UT App 32, ¶14. In fact, the statute indicates that the trial court cannot make the decision following the request for clarification and is instead limited to clarifying its previous sentencing order. See id. (citing Utah Code Ann. §76-3-401 (1)). “This emphasis on clarification of the original commitment order indicates that the concurrent or consecutive decision must be made at the time of sentencing and may not be decided at some later date.” Jaramillo, 2007 UT App 32, ¶14.

The fact that a judge must consider certain statutory factors before imposing consecutive sentences further demonstrates that the consecutive or concurrent sentencing decision must be made at the time of sentencing. Id. at ¶15. “The requirement that the consecutive/concurrent decision be made at the time of sentencing gives the trial court, the State and defendants a fixed point in time at which to evaluate the statutory factors.” Id. This is also consistent with the requirement of section 77-18-1 that information which bears on the statutory factors specific to the defendant be given to the trial court prior to

the imposition of sentence, and ensures that consecutive sentencing decisions are based on factors relevant to the crimes themselves, and not based on the probation violations. See Jaramillo, 2007 UT App 32, ¶15 (noting that requiring consecutive sentencing decision to be made as part of the original sentencing decision avoids the improper situation where a court might make the decision to run sentences consecutively “based on [the defendant’s] probation violations, which occurred after the original sentencing.”); Utah Code Ann. §§ 77-18-1(5)(a) & (7).

Although Jaramillo involved simultaneously imposed misdemeanor sentences, the decision is applicable to sentences imposed in two different cases because it was rooted in statutory language; that statutory language is equally applicable in the instant case where consecutive felony sentences were imposed in two different cases. As previously outlined and recognized by the court of appeals in Jaramillo, the language of subsection (1) of section 76-3-401, requires a trial court to impose consecutive or concurrent sentences after a defendant “has been adjudged guilty” and to include that order in the judgment and commitment. The language of section 76-3-401(1) applies regardless of whether the sentences are part of a single case or part of two separate cases. See generally Jaramillo, 2007 UT App 32, ¶14 (analyzing language of subsection (1)). Moreover, subsection (b), which discusses the imposition of consecutive sentences when a defendant has multiple cases immediately follows subsection (a) which discusses the Jaramillo situation where the defendant receives multiple sentences in the same case. See Utah Code Ann. §76-3-401. Both subsection (a) and (b) are governed by the language of section 76-3-401(1) which mandates that in either situation, “if a defendant has been

adjudged guilty of more than one felony offense,” the trial court shall determine “whether to *impose* concurrent or consecutive sentences” and “shall indicate [whether the the sentences are consecutive] in the order of judgment and commitment,” regardless of whether the defendant has been adjudged guilty of multiple felonies in a single case or in multiple cases. See id. The decision in Jaramillo is therefore applicable to the present case.

Pursuant to Utah’s statutory scheme and the decision in Jaramillo, the trial court’s decision in this case to modify Yazzie’s sentences to run consecutively with sentences subsequently ordered by another judge, was improper. Judge McCleve had no authority to decide whether Yazzie’s sentences were to run consecutively after she had already imposed sentence and entered judgment. Further, like Jaramillo, allowing Judge McCleve to make this decision after the fact, and notably at the occasion of Yazzie’s order to show cause hearing, leaves open the possibility that Judge McCleve improperly considered Yazzie’s probation violations in augmenting the original sentence. Moreover, imposing consecutive sentences following probation revocation rather than at sentencing is contrary to the language of Utah Code Ann. §§76-3-401 and 77-18-1.

3. Utah’s statutory scheme allows a sentence to be served consecutively or concurrently with a sentence of probation; the fact that Yazzie was on probation in the case before Judge Fuchs did not preclude Judge McCleve from ordering that her sentence run consecutively with the sentence imposed by Judge Fuchs.

Although the majority in Anderson concluded, in contrast to Jaramillo, that the consecutive/concurrent sentencing decision could be made following probation revocation, that conclusion was based on the incorrect premise that Utah’s statutory

scheme does not permit a sentence that does not include incarceration to run consecutively or concurrently with another sentence. Because a sentence which includes probation qualifies as a sentence being served, Utah's statutory scheme establishes that a trial court can order a sentence which includes probation to run consecutively or concurrently with another sentence. Ordering that a sentence run consecutively or concurrently with a non-incarceration sentence does not give rise to practical problems and has been a common practice in Utah courts. Moreover, nothing in Utah's statutory scheme allows resentencing to impose consecutive sentences following probation revocation even if a consecutive/concurrent sentencing order could not have been issued when judgment was entered.

According to the majority in Anderson, the meaning of a "sentence[] the defendant is already serving," necessarily excludes suspended prison sentences and sentences of probation, and "section 76-3-401(1)(b) [therefore] does not authorize a court to order a sentence concurrent or consecutive to another sentence that has not yet been both imposed and executed;" in other words, a suspended sentence. Anderson, 2007 UT App 68, ¶11. But the majority's interpretation of the phrase "sentence[] . . . already serving" does not comport with the meaning of "sentence" as it is consistently used in Utah's statutory scheme and other jurisdictions. Contrary to the majority's reasoning, terms of probation and suspended prison sentences fall within the definition of "sentence" as it is employed in section 76-3-401. Id. at ¶22 (Davis, J., dissenting) ("probation is a sentence within the meaning of section 76-3-401(1)(b), and it is still a sentence being served even though that service may occur outside of jail or prison"). In fact, the Utah Code and

Rules of Criminal Procedure, as well as federal laws and Utah case law, among other sources, treat probation as a form of sentence. See Anderson, 2007 UT App 68, ¶11-22 (Davis, J., dissenting) (citing e.g. Utah Code Ann. § 77-27-1(10) (2003) (defining probation as “an act of grace by the court suspending the imposition or execution of a convicted offender’s sentence upon prescribed conditions.”); Utah Code Ann. § 76-3-201(2) (Supp.2006) (stating “a court may sentence a person convicted of an offense to any one of the following sentences or combination of them: . . . (c) to probation unless otherwise specifically provided by law . . . [or] (d) imprisonment”); 18 U.S.C. § 3561 (2000) (stating that “[a] defendant who has been found guilty of an offense may be *sentenced* to a term of probation[.]”) (emphasis added); Smith v. Cook, 803 P.2d 788, 793 (Utah 1990) (“[I]t is unnecessary to determine whether a person who has been placed on probation incurs the punishment set out in the sentence prior to the time probation is revoked, because it is clear that simply by being placed on probation, punishment is incurred.”); Black’s Law Dictionary 1220 (7th ed. 1999) (defining probation as a “court-imposed criminal sentence.”)).

Rather than support the majority’s conclusion that a sentence does not include a non-incarceration sentence, Utah’s Code and other authorities almost universally include non-incarceration sentences, including a sentence of probation as a sentence a defendant can be ordered to serve. For example, Utah Code Ann. §76-3-201 (2) makes it clear that a “sentence” is not just a sentence of imprisonment, but can also include probation, payment of a fine, or other sanctions. Id. Rule 22 (a) of the Rules of Criminal Procedure requires that the “time for *imposing* sentence” be set “not less than two nor more than 45

days after verdict or plea.” Utah R. Crim. P. 22(a). These provisions show that under Utah’s scheme, a defendant can be sentenced to serve probation after being adjudged guilty, and that probation qualifies as a sentence being served.

Because Utah’s statutory scheme allows the imposition of consecutive or concurrent sentencing orders at the time of judgment even though one or more of the sentences involve probation, such an approach to sentencing is common practice in Utah. This common practice is evinced by the fact that the presentence report in this case recommended that the sentences here run consecutively with the sentence in Judge Fuchs’ case, even though that sentence involved probation. Moreover, seven years ago, in Bird v. State, 2000 UT App 209 (unpublished), the court of appeals upheld the practice of imposing consecutive sentences even though one or more of the sentences involved probation. See Bird in addendum F. In Bird, the trial court sentenced the defendant to serve his sentence consecutively with another sentence that included probation. Although the court of appeals agreed that the claim was procedurally barred, it also reached the merits and recognized that “the [habeas] court correctly concluded that the sentencing court did not abuse its discretion in sentencing Bird to consecutive sentences.” Bird, 2000 UT App 9. Bird therefore shows not only that imposing consecutive sentences even though one of the sentences involves probation has been the practice in Utah, but also that the practice, based on Utah’s statutes, has been upheld on appeal.

Although a sentence of probation qualifies as a sentence a defendant is already serving under Utah’s statutory scheme, even if it did not, it does not automatically follow that a trial court has jurisdiction to impose an increased sentence following probation

revocation. In other words, the inability to impose consecutive sentences at the time of final judgment does not automatically create jurisdiction to amend a previously entered final judgment. Utah's statutory scheme contemplates entry of final judgment followed by probation and there is no provision giving the trial court authority or jurisdiction to increase the sentence following probation revocation. Instead, even if the trial court could not impose consecutive sentences at the time final judgment was entered because one of the sentences did not include incarceration, the court would nevertheless be limited by section 77-18-1 and the rest of Utah's statutory scheme to executing the previously imposed sentence following probation revocation. Because there is no authorization for imposing consecutive sentences following probation revocation and such an increase conflicts with double jeopardy concerns, the trial court in this case did not have jurisdiction to impose the increased consecutive sentencing order following probation revocation.

Yazzie's sentences, albeit in the form of probation, commenced on April 25, 2006, the date on which the sentences were imposed and entered by Judge McCleve; Yazzie therefore began serving the sentences on that date. At the time Judge McCleve sentenced Yazzie, Yazzie had already been sentenced by Judge Fuchs in the other case. In fact, the presentence report informed Judge McCleve that the other sentence existed, that an order to show cause was pending in that case, and that AP&P recommended that the judge order the sentence in this case to run consecutively with the sentence in Judge Fuchs case. Utah Code Ann. §76-3-401 required that Judge McCleve indicate in the order of judgment and commitment issued April 25, 2006 "if the sentences before the

court [were] to run concurrently or consecutively with any other sentences the defendant [was] already serving. “ Utah Code Ann. § 76-3-401(1)(b).

Following imposition of sentence and entry of judgment on April 26, 2006, Judge McCleve lost jurisdiction to increase Yazzie’s sentence. Instead, pursuant to Utah Code Ann. §77-18-1, Judge McCleve retained jurisdiction only to oversee probation and if probation was revoked, to execute the previously imposed sentence. Judge McCleve did not have authority pursuant to Utah’s statutory scheme to resentence Yazzie to a harsher sentence requiring that he serve the sentence consecutively with a sentence in another case.

4. The trial court’s order that sentences be served consecutively exceeds statutory authority and violates constitutional and statutory protections against double jeopardy.

Judge McCleve’s order following probation revocation that the sentences in her case be served consecutively with those entered by Judge Fuchs exceeds statutory authority, constitutes a more severe punishment than originally ordered, and also violates Yazzie’s constitutional and statutory protections against double jeopardy. See U.S. Const. amend. V; Utah Const. art. I, § 12; Utah Code Ann. § 77-1-6 (2)(a) (2003). The Fifth Amendment guarantee against double jeopardy, applicable to the states through the Fourteenth Amendment, protects individuals from multiple punishments for the same offense. U.S. Const. amend. V (“nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.”); Utah Code Ann. § 77-1-6 (2)(a) (“No person shall be put twice in jeopardy for the same offense.”). “If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished

for the same offence. And . . . there has never been any doubt of [this rule's] entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence.” North Carolina v. Pearce, 395 U.S. 711, 717 (1969) (overruled on other grounds Alabama v. Smith, 490 U.S. 794 (1989)) (omissions and alterations in original).

Double jeopardy is violated when a trial court increases a sentence after a defendant has commenced to serve it. Ex parte Lange, 85 U.S. at 176. “The Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it.” Id. at 173. Imposition of an increased sentence following probation revocation constitutes multiple punishments and violates double jeopardy. Nelson v. State, 617 P.2d 502, 504 (Alaska 1981); State v. Womack, 503 A.2d 352, 356 (N.J. Super. Ct. App. Div. 1985); Com. v. Tomlin, 336 A.2d 407, 408-09 (Pa. Super. Ct. 1975). A subsequent sentence is more severe if it “exceed[s] the first in appearance or effect, in the number of its elements [], or in their magnitude. This means that no new element of sentence can be added and that no element can be augmented in magnitude.” State v. Sorensen, 639 P.2d 179, 181 (Utah 1981).

In this case where the trial court sentenced Yazzie and entered judgment prior to probation, it was precluded from later increasing the sentence to include a consecutive sentencing order. When Judge McCleve added the requirement that the sentence be served consecutively with the sentence in the case before Judge Fuchs, the trial court augmented the sentence. By increasing the sentence and thereby imposing multiple

sentences for the same crime, the trial court violated the constitutional and statutory prohibitions against double jeopardy.

B. This Court May Correct An Illegal Sentence or a Sentence Imposed in an Illegal Manner Pursuant to Rule 22(e) of the Utah Rules Of Criminal Procedure.

Although defense counsel objected to the consecutive sentencing order, even if that objection did not preserve the issue for review, this Court can review the issue pursuant to Rule 22(e) of the Utah Rules of Criminal Procedure (hereinafter “Rule 22(e)”). Rule 22(e) states that “[t]he court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.” Utah R. Crim. P. 22(e). Courts applying and interpreting this rule have determined that the rule “permits [an appellate court] to consider the legality of a sentence even if the issue is raised for the first time on appeal.” State v. Brooks, 908 P.2d 856, 860 (Utah 1995); State v. Maguire, 1999 UT App 45, ¶6, n. 1, 975 P.2d 476. Thus, this Court may consider whether Yazzie’s sentence, including the trial court’s later entered order that the sentences be served consecutively with those sentences ordered by Judge Fuchs, is legal, and may correct the sentence to conform to the law.

Here, as set forth previously, the trial court’s sentence is illegal because it violated statutory provisions and resulted in multiple punishments in violation of statutory and constitutional and constitutional provisions which prohibit double jeopardy.

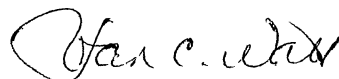
Additionally, Judge McCleve’s second sentence imposing the consecutive sentencing requirement was illegal since she did not have statutory authority to resentence Yazzie following probation revocation. Instead, Judge McCleve was required to impose any

consecutive sentencing order at the time judgment was entered, and was limited to executing the previously imposed sentence after probation revocation. Moreover, because the judge did not have the authority to impose consecutive sentences following probation revocation, the consecutive sentencing order was imposed in an illegal manner. The second judgment was therefore an illegal sentence and also imposed in an illegal manner, and should be corrected pursuant to Rule 22(e) regardless of whether the issue was properly preserved for appeal.

CONCLUSION

Because the trial court exceeded its authority and jurisdiction by imposing prison terms to be served consecutively with those ordered by another court at the order to show cause hearing, Mr. Yazzie respectfully requests this Court to reverse the trial court error.

SUBMITTED this 10th day of October, 2007.



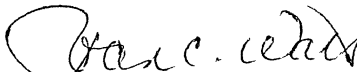
JOAN C. WATT

PATRICK W. CORUM

Attorneys for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, JOAN C. WATT, hereby certify that I have caused to be hand-delivered the original and seven copies of the foregoing to the Utah Supreme Court, 450 South State, 5th Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 east 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 10th day of October, 2007.



JOAN C. WATT

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this ____ day of October, 2007.

Tab A

IN THE UTAH COURT OF APPEALS

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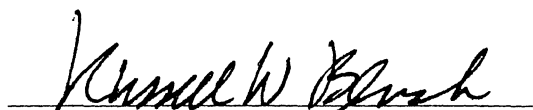
State of Utah,)	
)	
Plaintiff and Appellee,)	
)	ORDER OF CERTIFICATION
v.)	
)	
Brandon Dominic Yazzie,)	Case No. 20060525-CA
)	
Defendant and Appellant.)	

This case is before the court on its own motion to certify the cases "for immediate transfer to the Supreme Court for determination." Utah R. App. P. 43(a). Based on the affirmative vote of at least four judges of the Utah Court of Appeals,

IT IS HEREBY ORDERED that the appeal is certified for immediate transfer to the Utah Supreme Court for determination.

Dated this 13th day of August, 2007.

FOR THE COURT:



Russell W. Bench,
Presiding Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2007, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

J PATRICK W CORUM
JOAN C WATT
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 E 500 S STE 300
SALT LAKE CITY UT 84111

MARK L SHURTLEFF
ATTORNEY GENERAL
J. FREDERIC VOROS, JR.
RYAN D TENNEY
ASSISTANT ATTORNEY GENERAL
160 E 300 S 6TH FL
PO BOX 140854
SALT LAKE CITY UT 84114-0854

Dated this August 14, 2007.

By Merilee Hammond
Deputy Clerk

Case No. 20060525
District Court No. 051900375

Tab B

3RD DISTRICT COURT - SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	POST SENTENCING
	:	JUDGMENT/COMMITMENT
	:	
vs.	:	Case No: 051900375 FS
	:	
BRANDON DOMINIC YAZZIE,	:	Judge: SHEILA K MCCLEVE
Defendant.	:	Date: May 1, 2006

PRESENT

Clerk: jennifb

Prosecutor: UPDEGROVE, KENNETH R

Defendant

Defendant's Attorney(s): CORUM, PATRICK W

DEFENDANT INFORMATION

Date of birth: June 9, 1984

Video

Tape Number: VIDEO Tape Count: 11:08

CHARGES

1. CRIMINAL MISCHIEF - 3rd Degree Felony
Plea: Guilty - Disposition: 03/07/2005 Guilty
2. BURGLARY - 3rd Degree Felony
Plea: Guilty - Disposition: 03/07/2005 Guilty

SENTENCE, JUDGMENT and COMMITMENT

The defendant admits the following numbered allegations as stated in the Affidavit and Order to Show Cause: 1-9

The defendant's probation is revoked.

The defendant is to serve the sentence as imposed in the original Sentence, Judgment and Commitment.

Commitment is to begin immediately. To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison

The defendant's probation is terminated unsuccessfully.

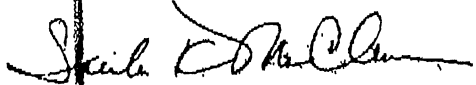
Case No: 051900375
Date: May 01, 2006

CHARGES TO RUN CONSECUTIVE TO ONE ANOTHER AND ANY OTHER CHARGES
ORIGINAL SENTENCE OF PRISON

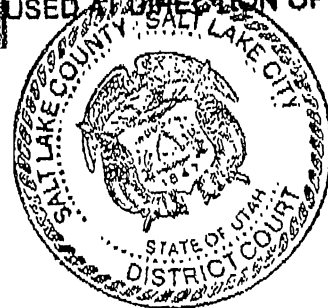
Based on the defendant's conviction of CRIMINAL MISCHIEF a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

Based on the defendant's conviction of BURGLARY a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

Dated this 1 day of May, 2006.


SHEILA K MCCLEVE
District Court Judge

By 
STAMP USED AT DIRECTION OF JUDGE



Tab C

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 051900375 FS
	:	
BRANDON DOMINIC YAZZIE,	:	Judge: SHEILA K. MCCLEVE
Defendant.	:	Date: April 25, 2005

PRESENT

Clerk: lauraj
Prosecutor: NATALE, JOY E
Defendant
Defendant's Attorney(s): CORUM, PATRICK W

DEFENDANT INFORMATION

Date of birth: June 9, 1984
Video
Tape Number: 4/25/05 Tape Count: 9:55:22

CHARGES

1. CRIMINAL MISCHIEF - 3rd Degree Felony
Plea: Guilty - Disposition: 03/07/2005 Guilty
2. BURGLARY - 3rd Degree Felony
Plea: Guilty - Disposition: 03/07/2005 Guilty

SENTENCE PRISON

Based on the defendant's conviction of CRIMINAL MISCHIEF a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.
The prison term is suspended.

Based on the defendant's conviction of BURGLARY a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.
The prison term is suspended.

Case No: 051900375
Date: Apr 25, 2005

SENTENCE JAIL

Based on the defendant's conviction of CRIMINAL MISCHIEF a 3rd Degree Felony, the defendant is sentenced to a term of 365 day(s)

SENTENCE TRUST

The defendant is to pay the following:

Restitution: Amount: \$5000.00 Plus Interest

Pay in behalf of: UNKNOWN

Attorney Fees: Amount: \$250.00

Pay in behalf of: SALT LAKE LEGAL DEFENDERS

The amount of Restitution is to be determined by Adult Probation & Parole.

	Attorney Fees	Adult Probation
& Parole		

ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).

Probation is to be supervised by Adult Probation & Parole.

Defendant to serve 365 day(s) jail.

PROBATION CONDITIONS

Usual and ordinary conditions required by the Department of Adult Probation & Parole.

Submit to searches of person and property upon the request of any Law Enforcement Officer.

Do not use, consume or possess alcohol or illegal drugs, nor associate with any people using, possessing or consuming alcohol or illegal drugs.

Submit to tests of breath and urine upon the request of any Law Enforcement Officer.

Participate in and complete any educational; and/or vocational training as directed by the Department of Adult Probation and Parole.

Case No: 051900375
Date: Apr 25, 2005

Violate no laws.

Enter, participate in, and complete any program, counseling, or treatment as directed by the Department of Adult Probation and Parole.

Pay restitution as determined by Probation Officer.

Submit to drug testing.

Not frequent any place where drugs are used, sold, or otherwise distributed illegally.

Refrain from the use of alcoholic beverages.

0-5 YEARS PRISON ON EACH COUNT, CONSECUTIVE TO EACH OTHER,

SUSPENDED ALL BUT 365 DAYS JAIL, NO CREDIT FOR TIME SERVED,
NO SPLD.

COMPLETE CATS

REVIEW NEEDS TO BE SCHEDULED PRIOR TO BEING RELEASE AFTER CATS
PAY \$5,000 RESTITUTION AND \$250 ATTORNEY FEE. PAY MONTHLY TO AP&P
DEFT BE PLACED ON ELECTRONIC MONITORING THROUGH AP&P

TAKE ANTIBUSE AS PRESCRIBED BY DOCTOR

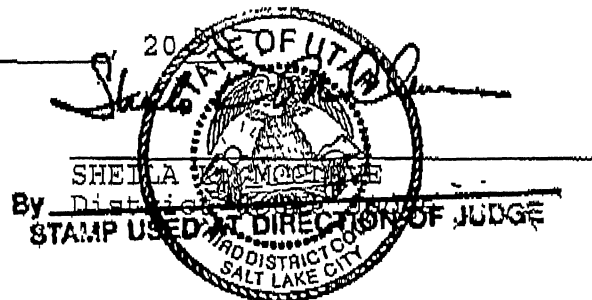
COMPLETE ANY EVALUATION AND TREATMENT AS REQUIRED BY AP&P

COMPLETE GED

REPORT RESIDENCE ADDRESS TO AP&P

Dated this 4 day of 25

20



Tab D

SENTENCING

76-3-201. Definitions — Sentences or combination of sentences allowed — Civil penalties — Hearing.

- (1) As used in this section:
 - (a) “Conviction” includes a:
 - (i) judgment of guilt; and
 - (ii) plea of guilty.
 - (b) “Criminal activities” means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.
 - (c) “Pecuniary damages” means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant’s criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.
 - (d) “Restitution” means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.
 - (e) (i) “Victim” means any person who the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities.
 - (ii) “Victim” does not include any coparticipant in the defendant’s criminal activities.
- (2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:
 - (a) to pay a fine;
 - (b) to removal or disqualification from public or private office;
 - (c) to probation unless otherwise specifically provided by law;
 - (d) to imprisonment;

- (e) on or after April 27, 1992, to life in prison without parole; or
 - (f) to death.
- (3) (a) This chapter does not deprive a court of authority conferred by law to:
- (i) forfeit property;
 - (ii) dissolve a corporation;
 - (iii) suspend or cancel a license;
 - (iv) permit removal of a person from office;
 - (v) cite for contempt; or
 - (vi) impose any other civil penalty.
- (b) A civil penalty may be included in a sentence.
- (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.
- (b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.
- (5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:
- (i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;
 - (ii) charged with a felony or a class A, B, or C misdemeanor; and
 - (iii) convicted of a crime.
- (b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:
- (i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or
 - (ii) the defendant was not transported pursuant to a court order.
- (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:
- (A) \$75 for up to 100 miles a defendant is transported;
 - (B) \$125 for 100 up to 200 miles a defendant is transported;
- and
- (C) \$250 for 200 miles or more a defendant is transported.
- (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.
- (d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.
- (6) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay court-ordered restitution to the county for the cost of incarceration in the county correctional facility before and after sentencing if:

- (i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and
 - (ii) (A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or
 - (B) the reimbursement does not duplicate the reimbursement provided under Section 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a condition of probation under Subsection 77-18-1(8).
 - (b) (i) The costs of incarceration under Subsection (6)(a) are:
 - (A) the daily core inmate incarceration costs and medical and transportation costs established under Section 64-13c-302; and
 - (B) the costs of transportation services and medical care that exceed the negotiated reimbursement rate established under Subsection 64-13c-302(2).
 - (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.
 - (c) In determining the monetary sum and other conditions for the court-ordered restitution under this Subsection (6), the court shall consider the criteria provided under Subsections 77-38a-302(5)(c)(i) through (iv).
 - (d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).
- (7) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.
- (b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.
 - (c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.
 - (d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.
 - (e) In determining a just sentence, the court shall consider sentencing guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission.
- (8) If during the commission of a crime described as child kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child

the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the highest minimum term in state prison. This Subsection (8) takes precedence over any conflicting provision of law.

76-3-401. Concurrent or consecutive sentences — Limitations — Definition.

(1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:

(a) if the sentences imposed are to run concurrently or consecutively to each other; and

(b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.

(2) In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.

(3) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.

(4) If a written order of commitment does not clearly state whether the sentences are to run consecutively or concurrently, the Board of Pardons and Parole shall request clarification from the court. Upon receipt of the request, the court shall enter a clarified order of commitment stating whether the sentences are to run consecutively or concurrently.

(5) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.

(6) (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).

(b) The limitation under Subsection (6)(a) does not apply if:

(i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or

(ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.

(7) The limitation in Subsection (6)(a) applies if a defendant:

- (a) is sentenced at the same time for more than one offense;
- (b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or
- (c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.

(8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:

- (a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and
- (b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.

(9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.

(10) This section may not be construed to restrict the number or length of individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed, but only to limit the length of sentences actually served under the commitments.

(11) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases.

(12) As used in this section, "imprisoned" means sentenced and committed to a secure correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided, and the person is not on parole, regardless of where the person is located.

UTAH CODE ANN. § 77-1-6 (2003)

77-1-6. Rights of defendant.

- (1) In criminal prosecutions the defendant is entitled:
 - (a) To appear in person and defend in person or by counsel;
 - (b) To receive a copy of the accusation filed against him;
 - (c) To testify in his own behalf;
 - (d) To be confronted by the witnesses against him;
 - (e) To have compulsory process to insure the attendance of witnesses in his behalf;
 - (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
 - (g) To the right of appeal in all cases; and
 - (h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.
- (2) In addition:
 - (a) No person shall be put twice in jeopardy for the same offense;
 - (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
 - (c) No person shall be compelled to give evidence against himself;
 - (d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
 - (e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

77-18-1. Suspension of sentence — Pleas held in abeyance — Probation — Supervision — Presentence investigation — Standards — Confidentiality — Terms and conditions — Termination, revocation, modification, or extension — Hearings — Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as

provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the

defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(d) The presentence investigation report shall include:

(i) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1; and

(ii) recommendations for treatment of the offender.

(e) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support he is legally liable;

(iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 78-11-20.7;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

- (x) comply with other terms and conditions the court considers appropriate; and
- (b) if convicted on or after May 5, 1997:
 - (i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or
 - (ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:
 - (A) a diagnosed learning disability; or
 - (B) other justified cause.
- (9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
 - (a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and
 - (b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).
- (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.
 - (ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.
 - (B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.
 - (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court.
- (b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.
 - (ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.
- (11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.
 - (ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) The court may order the defendant to commit himself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in

77-27-1. Definitions.

As used in this chapter:

- (1) "Board" means the Board of Pardons and Parole.
- (2) "Commission" means the Commission on Criminal and Juvenile Justice.
- (3) "Commutation" is the change from a greater to a lesser punishment after conviction.
- (4) "Department" means the Department of Corrections.
- (5) "Expiration" occurs when the maximum sentence has run.
- (6) "Family" means persons related to the victim as a spouse, child, sibling, parent, or grandparent, or the victim's legal guardian.
- (7) "Panel" means members of the board assigned by the chairperson to a particular case.
- (8) "Pardon" is an act of grace by an appropriate authority exempting a person from punishment for a crime.
- (9) "Parole" is a release from imprisonment on prescribed conditions which, if satisfactorily performed by the parolee, enables the parolee to obtain a termination of his sentence.
- (10) "Probation" is an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon prescribed conditions.
- (11) "Reprieve or respite" is the temporary suspension of the execution of the sentence.
- (12) "Termination" is the act of an appropriate authority discharging from parole or concluding the sentence of imprisonment prior to the expiration of the sentence.
- (13) "Victim" means:
 - (a) a person against whom the defendant committed a felony or class A misdemeanor offense, and regarding which offense a hearing is held under this chapter; or
 - (b) the victim's family, if the victim is deceased as a result of the offense for which a hearing is held under this chapter.

Utah Rules of Criminal Procedure 22

Rule 22. Sentence, judgment and commitment.

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than two nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment, or to show any legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence.

(b) On the same grounds that a defendant may be tried in defendant's absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to appear for sentence, a warrant for defendant's arrest may be issued by the court.

(c) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the sentence. Following imposition of sentence, the court shall advise the defendant of defendant's right to appeal and the time within which any appeal shall be filed.

(d) When a jail or prison sentence is imposed, the court shall issue its commitment setting forth the sentence. The officer delivering the defendant to the jail or prison shall deliver a true copy of the commitment to the jail or prison and shall make the officer's return on the commitment and file it with the court.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code Ann. Â§ 77-16a-202(1)(b), the court shall so specify in the sentencing order.

CONSTITUTION OF UTAH

ARTICLE I

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

CONSTITUTION OF THE UNITED STATES

AMENDMENT V

**[Criminal actions — Provisions concerning — Due process
of law and just compensation clauses.]**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.